

House Finance, Ways, and Means Committee Amendment #1

Amendment No. 2 to HB2546

Kisber
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Date _____

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AMEND Senate Bill No. 2562*

House Bill No. 2546

by deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 126, Part 2, is amended by deleting the word “dealer” wherever it appears and by substituting instead the word “retailer”.

SECTION 2. Tennessee Code Annotated, Section 68-126-202, is amended by deleting the text of subsection (2) and by substituting instead the following language:

- (2) “Commissioner” means the commissioner of commerce and insurance or the commissioner’s designee;

SECTION 3. Tennessee Code Annotated, Section 68-126-202, is further amended by adding the following language as a new subsection (6) and by renumbering the remaining subsections accordingly:

- (6) “Mobile home” means a structure manufactured before June 15, 1976, that is not constructed in accordance with the national manufactured home construction and safety standards act of 1974, as amended (42 U.S.C. § 5401 et seq.). It is a structure that is transportable in one (1) or more sections that in the traveling mode is eight (8) body-feet or more in width and forty (40) body-feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet and that is built on a chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes any plumbing, heating, air conditioning and electrical systems contained therein.

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SECTION 4. Tennessee Code Annotated, Section 68-126-202, is further amended by deleting the language of existing subsection (9) in its entirety and by substituting instead the following language:

- (9) "Set up" means installation of the manufactured home according to the manufacturer's installation instructions or those provided in Sections 68-126-403(b)(2)(B), (C) and (D), and includes, but is not limited to: site preparation; support structures including footings, piers, caps and shims; anchoring systems; ground moisture barriers; connection, fastening, moisture barrier installation between sections, and roofing dry-in of multi-sections; HVAC duct connections; plumbing and electrical cross-over connections; completion of exterior siding; installation of heating application ventilation systems or fireplace chimney systems; and completion of hinged-roof sections.

SECTION 5. Tennessee Code Annotated, Section 68-126-205, is amended by deleting the text of the section in its entirety and by substituting instead the following language:

- (a) No person may manufacture, sell, lease, or offer to sell or lease any manufactured home or recreational vehicle in violation of rules of the commissioner issued to afford reasonable protection to persons and property with respect to the construction, assembly, and sale or lease of such manufactured homes and recreational vehicles. Compliance with such rules shall be evidenced in the manner required therein.

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(b) Any retailer who sells a manufactured home to a consumer in this state shall either:

- (1) Provide set-up as provided in Section 68-126-403; or
- (2) Cause the home to be set up, as provided in Section 68-126-403, by a licensed manufactured home installer approved and bonded in accordance with Section 68-126-404.

SECTION 6. Tennessee Code Annotated, Section 68-126-206, is amended by deleting the text of subsection (a) in its entirety and by substituting instead the following language:

(a) It is unlawful to engage in business in this state as a manufacturer or retailer prior to obtaining a license from the commissioner. The commissioner may require of an applicant for a license such information and evidence of qualifications as are reasonably necessary to protect the public safety and welfare. An application for a license shall be submitted on the prescribed form, shall contain the applicant's business tax or privilege tax number, and shall be accompanied by a fee of one hundred dollars (\$100.00) for a manufacturer's license or forty dollars (\$40.00) for a retailer's license. License fees shall be payable annually, and shall not be prorated for portions of a year. All licenses shall expire one (1) year from the date of issuance.

- (1) In addition to meeting other lawful requirements, an applicant for a license as a retailer shall present, at the time of application, proof of having completed a fifteen (15) hour course, approved by the commissioner, covering the installation of manufactured homes.

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- (2) Prior to being issued a license as a retailer, an applicant shall have passed an examination, in manufactured home installation, that is approved by the commissioner.

As a prerequisite to renewal for the year 2004 and prior to December 31, 2003, every person who was licensed prior to July 1, 2003 as a dealer shall complete a fifteen (15) hour course, approved by the commissioner, in the installation of manufactured homes, pass an examination in manufactured home installation that is approved by the commissioner, and present proof of the same to the commissioner. Failure to comply with the requirements of this subsection shall result in nonrenewal of the license (which will thereafter be known as a retailer license).

SECTION 7. Tennessee Code Annotated, Section 68-126-206, is further amended by deleting the text of subsection (b) and by substituting instead the following language:

- (b) After January 1, 2004 and as a prerequisite to renewal of a license as a retailer, the retailer shall present proof of having completed five (5) hours of continuing education in manufactured home installation, during the twelve (12) month period immediately preceding renewal, that is approved by the commissioner. Any manufacturer or retailer who fails to renew such manufacturer's or retailer's license on or before its expiration date, or who commences business in this state prior to obtaining a license, shall be required to pay a penalty, in an amount the commissioner may determine by rule, for acting as a manufacturer or retailer

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without a license, in addition to the fee established in subsection (a) for issuance of a license.

SECTION 8. Tennessee Code Annotated, Section 68-126-214, is amended by deleting the text of the section in its entirety and by substituting instead the following language:

In order to eliminate unnecessary duplication of reviews of designs, inspections, certifications of manufactured homes and recreational vehicles, and licensure of installers, the commissioner may negotiate and enter into reciprocal agreements with appropriate officials of other states, or with an agent for such states. However, no such agreement shall be entered into if the commissioner determines that it would not provide protection at least equivalent to that afforded by the standards and procedures established under this part.

SECTION 9. Tennessee Code Annotated, Section 68-126-215, is amended by deleting the text of the section in its entirety and by substituting instead the following language:

All revenue resulting from the administration and enforcement of this part shall be placed to the credit of the manufactured housing fund created by section 68-126-406(c) and shall be used accordingly.

SECTION 10. Tennessee Code Annotated, Section 68-126-401, is amended by deleting the text of the section in its entirety and by substituting instead the following language:

This part shall be known and may be cited as the "Tennessee Manufactured Home Installation Act."

SECTION 11. Tennessee Code Annotated, Section 68-126-402, is amended by adding the following language as a new, appropriately designated subsection:

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- () “Commissioner” means the commissioner of commerce and insurance or the commissioner’s designee;

SECTION 12. Tennessee Code Annotated, Section 68-126-402, is amended by deleting the text of subsections (3) and (4) and by substituting instead the following:

- (3) “Set up” means installation of the manufactured home according to the manufacturer’s installation instructions or those provided in Section 68-126-403(c)(2), (3) and (4), and includes, but is not limited to: site preparation; support structures including footings, piers, caps and shims; anchoring systems; ground moisture barriers; connection, fastening, moisture barrier installation between sections, and roofing dry-in of multi-sections; HVAC duct connections; plumbing and electrical cross-over connections; completion of exterior siding; installation of heating application ventilation systems or fireplace chimney systems; and completion of hinged-roof sections.

SECTION 13. Tennessee Code Annotated, Section 68-126-403, is amended by deleting the text of the section in its entirety and by substituting instead the following language:

- (a) It is unlawful to occupy any manufactured home in this state unless the manufactured home has been installed by a person licensed by the commissioner to make such installation.
- (b) It is unlawful for any person to locate or relocate any manufactured home in this state other than a home heretofore exempt, or a home previously installed and inspected according to rules in effect at the time of location on the site, unless

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the installation of the manufactured home has been done by a person licensed by the commissioner to make such installation.

(c) New homes installed after the effective date of this act shall be installed according to the following criteria:

- (1) In compliance with the manufacturer's installation instructions, if provided or available;
- (2) If the manufacturer has not provided or does not make available suitable instructions, then the home shall be installed according to instructions prepared and sealed by an engineer registered in the state of Tennessee; or
- (3) As an alternative to subsections (c)(1) or (c)(2), the home may be installed according to the instructions contained in ANSI 225.1, 1994 Edition, until such time as federal standards are implemented pursuant to the Manufactured Housing Improvement Act of 2000, at which time the federal standards shall supplant the ANSI 225.1, 1994 Edition, instructions.
- (4) In addition to the requirements of subsections (c)(1), (c)(2) or (c)(3), installation shall comply with federal emergency management agency regulations applicable to flood zones.

(d) Used homes installed after the effective date of this act shall be installed according to the following criteria:

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- (1) In compliance with the manufacturer's manual in use at the time the home was manufactured;
- (2) As an alternative to subsection (d)(1), the home shall be installed according to instructions prepared and sealed by an engineer registered in the state of Tennessee; or
- (3) As an alternative to subsections (d)(1) and (d)(2), the home may be installed according to the instructions in ANSI 225.1, 1994 Edition, until such time as federal standards are implemented pursuant to the Manufactured Housing Improvement Act of 2000, at which time the federal standards shall supplant the ANSI 225.1, 1994 Edition, instructions.
- (4) In addition to the requirements of subsections (d)(1), (d)(2) or (d)(3), installation shall comply with federal emergency management agency regulations applicable to flood zones.

SECTION 14. Tennessee Code Annotated, Section 68-126-404, is amended by deleting the text of the section in its entirety and by substituting instead the following language:

- (a) No person may install a manufactured home in this state unless such person is licensed by the commissioner as a manufactured home installer; except that a duly licensed manufactured home retailer may install manufactured homes, provided, that the person(s) performing the installation work at the site are the employees of the retailer. Any subcontractor used by a licensed retailer to perform installation work in accordance with Section 68-126-205 shall be duly

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licensed as a manufactured home installer or be covered under the retailer's bond. At least one (1) person who actually performs installation work at the site shall be licensed as either a retailer or a manufactured home installer.

- (b) In addition to meeting other lawful requirements, an applicant for a license as a manufactured home installer shall present, at the time of application, proof of having completed a fifteen (15) hour course, approved by the commissioner, covering the installation of manufactured homes.
- (c) Prior to being issued a license as a manufactured home installer, an applicant shall have passed an examination in manufactured home installation that is approved by the commissioner.
- (d) As a prerequisite to renewal for the year 2004 and prior to December 31, 2003, every person who was licensed prior to July 1, 2003 as a stabilizing system installer shall complete a fifteen (15) hour course, approved by the commissioner, in the installation of manufactured homes, pass an examination in manufactured home installation that is approved by the commissioner, and present proof of the same to the commissioner. Failure to comply with the requirements of this subsection shall result in nonrenewal of the license (which will thereafter be known as a manufactured home installer license).
- (e) An application for a license as a manufactured home installer shall be submitted on a form prescribed by the commissioner, and shall be accompanied by a fee of twenty-five dollars (\$25.00). An application for a license as a manufactured home installer shall be accompanied by a surety bond executed by the applicant

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as principal and by a surety company qualified to do business in the state of Tennessee as a surety. The bond shall be executed to the state of Tennessee and in favor of any consumer who shall suffer any loss as a result of the violation of this part. The bond shall be in the amount of ten thousand dollars (\$10,000.00). The fee specified herein shall be paid annually and shall not be prorated for portions of a year. All licenses shall expire one (1) year from the date of issuance.

- (f) After January 1, 2004 and as a prerequisite to renewal of a license as a manufactured home installer, the manufactured home installer shall present proof of having completed five (5) hours of continuing education in manufactured home installation, during the twelve (12) month period immediately preceding renewal, that is approved by the commissioner.
- (g) The commissioner may require retailers or installers to establish and maintain such records, make such reports, and provide such information as may be necessary to ensure compliance with this part.

SECTION 15. Tennessee Code Annotated, Section 68-126-406, is amended by deleting the text of the section in its entirety and by substituting instead the following language:

- (a) All manufactured homes required to be installed pursuant to Section 68-126-403 may be inspected for compliance with applicable standards by qualified manufactured housing inspectors provided by the commissioner. Such inspectors shall have specialized training in manufactured housing installation

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inspection. The form and manner of training shall be determined by the commissioner.

- (b) The installer shall apply for an installation permit prior to installing a manufactured home and shall pay an inspection fee of forty-five dollars (\$45.00). The permit may be purchased and the fee shall be paid to the county clerk in any county of this state. The county clerk shall retain eight dollars (\$8.00) of each permit fee and remit thirty-seven dollars (\$37.00) to the commissioner. The fees shall be remitted to the commissioner on a monthly basis, not later than the twentieth day of the month following the month in which the fee is paid, and such remittance shall include a report of the license numbers of the installers and retailers who purchase permits and the corresponding permit numbers sold.
- (c) All fees remitted to the commissioner, plus any funds received by the state from the federal department of housing and urban development for manufactured housing, shall be allocated to a fund within the general fund called the "manufactured housing fund" and shall, subject to appropriation, be utilized exclusively to fund the commissioner's regulatory activities pertaining to manufactured homes. Funds deposited in the manufactured housing fund shall not revert to the general fund at the end of the fiscal year but shall remain available for appropriation for the purposes provided in this subsection.
- (d) In case of rejection of any part of the home installation, a separate forty-five dollar (\$45.00) fee shall be charged to the installer.

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- (e) The commissioner shall ensure that at least five percent (5%) of manufactured homes installed in the State of Tennessee each year are inspected; provided, that there shall be at least one (1) inspection of a home installed by each installer each year. Inspection shall occur within twenty (20) business days after the commissioner's receipt of the installer's report. Each installer shall submit a report to the commissioner on at least a weekly basis describing the homes installed by the installer that week. Such report shall include, at a minimum, the name and address of the retailer and the location of each home installed.
- (f) Upon payment of the inspection fee, the county clerk shall provide the purchaser a permit decal. The commissioner shall provide the permit decals to the county clerk. Installers and retailers may purchase decals in lots of ten (10) each; provided, that no more than twenty (20) permits are outstanding at any time. The commissioner shall account for all permits.
- (g) A permit decal shall be placed on each new and used home that is installed after January 1, 2004. The decal shall be affixed inside the electrical panel box cover. The installer shall write the address where the home is located on the permit. The state or local electrical inspector shall not authorize electricity to be turned on at the home if no installation decal is on the home when the electrical installation is done.
- (h) If a permit decal is lost or destroyed, the applicant for a replacement decal shall pay to the county clerk a fee of forty-five dollars (\$45.00), from which the county clerk shall retain eight dollars (\$8.00) and remit thirty-seven dollars (\$37.00) to

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the commissioner. The applicant for the replacement permit decal shall provide to the county clerk an affidavit stating that the decal was lost or destroyed. The county clerk shall submit a copy of the affidavit for any replacement permit decal issued with the monthly report to the commissioner.

SECTION 16. Tennessee Code Annotated, Section 68-126-407, is amended by deleting the section in its entirety and by renumbering subsequent sections accordingly.

SECTION 17. Tennessee Code Annotated, Section 68-126-410, is amended by deleting the text of the section in its entirety and by substituting instead the following language:

- (a) For purposes of this section, "imminent safety hazard" means a hazard creating an imminent and unreasonable risk of death or severe personal injury.
- (b) Any person who violates any provision of this part, or any rule or regulation promulgated under this part, shall be subject to the following penalties:
 - (1) If the violation does not create an imminent safety hazard, the following shall apply:
 - (A) The commissioner shall notify the installer, in writing, of the violation(s) and direct the installer to correct the violation(s) within thirty (30) days of the date of the letter. Such notification shall also be sent to the retailer. In determining whether such a violation has occurred, the inspector shall take into account the manufacturer's installation instructions. The installer shall respond to the commissioner, in writing, and confirm that corrections have been made and outline the steps taken to correct the violation(s). The

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commissioner may reinspect the home or verify with the homeowner that corrections were made.

(B) If after notification of violation(s) and after thirty (30) days have passed, the installer has not corrected the violations, then the commissioner may, after providing notice and an opportunity for a hearing pursuant to the Uniform Administrative Act compiled in title 4, chapter 5, revoke or suspend the license of the installer. In addition to or in lieu of any other lawful discipline, the commissioner may assess a civil penalty in accordance with the following schedule:

- (i) For a first offense within a one (1) year period, a civil penalty of one hundred dollars (\$100);
- (ii) For a second offense not involving the same violation within a one (1) year period, a civil penalty in an amount of one hundred dollars (\$100) to five hundred dollars (\$500);
- (iii) For a third or subsequent offense not involving the same violation within a two (2) year period, a civil penalty in an amount of five hundred dollars (\$500) to two thousand five hundred dollars (\$2,500);
- (iv) For a second or subsequent offense involving the same violation within a two (2) year period, a civil penalty of two thousand five hundred dollars (\$2,500).

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- (v) In addition to or in lieu of imposing other lawful discipline, the commissioner may require an installer to take additional education or retake the examination or both.
- (C) In any finding of violation(s), the inspector shall cite on the inspection report the section from the manufacturer's installation instructions (or other applicable installation standards) pertaining to the violation(s). If the responsibility for the violation(s) is not clear and the retailer presents no documentation to the contrary, the retailer shall be held responsible for the entire installation.
- (2) If the violation creates an imminent safety hazard, the following shall apply:
 - (A) The commissioner shall notify the installer immediately, in writing, of the violation(s) and direct the installer to correct the violation(s) immediately. Such notification shall also be sent to the retailer. In determining whether such a violation has occurred, the inspector shall take into account the manufacturer's installation instructions. The installer shall respond to the commissioner, in writing, within twenty-four (24) hours of receiving notification of the violation(s) and provide a plan of corrective action outlining the steps that will be taken to correct the violation(s). The commissioner may reinspect the home or verify with the homeowner that corrections were made.

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- (B) If after notification of violation(s) and after twenty-four (24) hours have passed, the installer has not submitted an acceptable plan of corrective action, then the commissioner may, after providing notice and an opportunity for a hearing pursuant to the Uniform Administrative Act compiled in title 4, chapter 5, revoke or suspend the license of the installer. In addition to or in lieu of any other lawful discipline, the commissioner may assess a civil penalty in accordance with the schedule set forth in subsection (b)(1)(B) above.
- (C) In addition to or in lieu of imposing other lawful discipline, the commissioner may require an installer to take additional education or retake the examination or both.
- (D) In any finding of violation(s), the inspector shall cite on the inspection report the section from the manufacturer's installation instructions (or other applicable installation standards) pertaining to the violation(s). If the responsibility for the violation(s) is not clear and the installer presents no documentation to the contrary, the retailer shall be held responsible for the entire installation.
- (c) Any person who violates any provision of this part, or of any rule or regulation promulgated pursuant thereto, commits a Class C misdemeanor.

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- (d) The commissioner may also seek injunctive relief against any violation of this part, or of any rule or regulation promulgated pursuant thereto, in accordance with the procedure established in section 68-135-111.

SECTION 18. Tennessee Code Annotated, Section 68-126-411, is amended by deleting the text of the section in its entirety and by substituting instead the following language:

All revenue resulting from the administration of this part shall be placed to the credit of the manufactured housing fund, and shall be used accordingly.

SECTION 19. Tennessee Code Annotated, Section 68-126-412, is amended by deleting the text of the section in its entirety and by substituting instead the following language:

It is the intention of the general assembly that this part, and the regulations issued pursuant thereto, preempt any local ordinance or regulation of the installation of manufactured homes. All city, county and consolidated government resolutions, ordinances, regulations and code requirements on installation of manufactured homes are superseded by the provisions of this chapter, and regulations issued thereto.

SECTION 20. Any person who on July 1, 2003 holds a dealer license or a manufactured home stabilizing system installer license issued under prior law of this state shall be entitled to convert a dealer license to a retailer license or a stabilizing system installer license to a manufactured home installer license at the time of renewal, upon the fulfillment of all the requirements for a new applicant for either a retailer or a manufactured home installer license set forth in Section 6 and Section 13 of this act.

SECTION 21.. This act shall take effect immediately for purposes of rulemaking, the public welfare requiring it. Notwithstanding any provision of this act to the contrary, this act shall

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take effect on July 1, 2003 for the purpose of requiring new applicants for a retailer or manufactured home installer license to comply with Section 6 and Section 13 of this act, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 2004, the public welfare requiring it.

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